

REMARKS

The final Office Action dated January 4, 2010, has been received and carefully noted. The above amendments and the following remarks are being submitted as a full and complete response thereto.

Claims 1, 3-11, 13-21 and 23-33 were rejected. Claims 1, 3-11, 13-21 and 23-33 are currently pending in the above-identified application, with claims 1, 11 and 21 being independent. By this Amendment, claims 1, 11 and 21 have been amended. Applicant submits that no new matter is added. Applicant respectfully requests reconsideration and withdrawal of the rejections.

Claims 1, 11 and 21 have been amended to clarify that the sample slot defines a volume having a length, width and height, the width being longer than the height, and the width being perpendicular to a light path. Support for this amendment is provided, for example, by Figure 4a.

Request for Reconsideration

Applicants submit that in view of the amendments to the claims presented above, and the remarks set forth below, the outstanding rejections have been overcome. Applicants respectfully request that the Examiner reconsider and withdraw the rejections, and provide an indication of allowable subject matter. If anything further is believed needed to place this application in condition for allowance, the Examiner is requested to contact Applicants' undersigned representative for an interview.

Rejection under 35 U.S.C. § 112, First Paragraph

Claims 1, 3-11, 13-21 and 23-33 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement because the specification and drawings allegedly do not provide support for the recitation that the sample slot and sample tab are rectangularly-shaped in transverse cross section. Without conceding the propriety of this rejection, Applicant submits that claims 1, 11 and 21 have been amended to clarify the volume defined by the sample slot. More particularly, claims 1, 11 and 21 have been amended to specify that the sample slot defines a volume having a length, width and height, the width being longer than the height, and the width being perpendicular to a light path. This amendment is supported at least by Figure 4a. Reconsideration and withdrawal of this rejection is respectfully requested in view of the foregoing comments and amendments.

Rejection under 35 U.S.C. § 112, Second Paragraph

Claims 1, 3-11, 13-21 and 23-33 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to define the structural relationship between the sample tab and the sample slot.

Without conceding the propriety of this rejection, Applicant submits that claims 1, 11 and 21 have been amended to clarify the volume defined by the sample slot. More particularly, claims 1, 11 and 21 have been amended to clarify that the sample slot defines a volume having a length, width and height, the width being longer than the height, and the width being perpendicular to a light path. A first aperture located between the source of EMR and the sample slot produces the light path therebetween,

where the sample slot receives a sample tab to be placed within the light path, the sample tab being rectangularly-shaped in transverse cross section. Applicants submit that the structural relationship between the sample slot and sample tab is clear in view of the amendments set forth above.

Reconsideration and removal of this rejection is respectfully requested in view of the foregoing comments and amendments.

Rejection under 35 U.S.C. § 103

Claims 1, 3-11, 13-21 and 23-33 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,846,492, in view of U.S. Patent No. 5,459,677, Wehlburg, Greensill, Ozdemir, Sum, Despagne or Swierenga.

Applicant respectfully traverses this rejection, which is addressed by way of the foregoing amendments and the comments set forth below.

Applicant submits that the cited references do not teach or suggest either individually or in combination the presently-claimed spectroscopic apparatus, which includes a sample slot adapted to receive a sample tab that is rectangularly-shaped in transverse cross section, and one or more than one upgraded primary calibration algorithm for one or more than one analyte, the one or more than one upgraded primary calibration algorithm in operative association with the spectroscopic apparatus and developed on the spectroscopic apparatus by combining some, or all of a calibration data set derived from a primary calibration set and obtained from one, or more than one other apparatus with additional data obtained from the spectroscopic apparatus, wherein the sample slot defines a volume having a length, width and height, the width

being longer than the height, and the width being perpendicular to a light path. In particular, it is pointed out that U.S. Patent No. 5,846,492 discloses a sample slot defining a volume having a width and a height that are equal rather than a sample slot defining a volume having a width longer than the height, as recited in the presently-amended claims.

Accordingly, Applicant submits that the presently-claimed apparatus is inventive in view of the cited references.

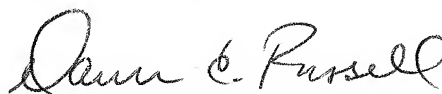
Applicant respectfully requests that that the rejection under 35 U.S.C. § 103(a) be withdrawn in view of the foregoing amendments and comments.

CONCLUSION

Applicant submits that the above-identified application is now in a condition for allowance, and favorable reconsideration and prompt allowance of these claims are respectfully requested. Should the Examiner believe that anything further is desirable in order to place the application in better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below to schedule a personal or telephone interview to discuss any remaining issues.

In the event this paper is not considered to be timely filed, Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension, together with any additional fees that may be due with respect to this paper, may be charged to Counsel's Deposit Account No. 01-2300, referencing Docket Number 026806-00014.

Respectfully submitted,
ARENT FOX LLP

A handwritten signature in cursive script, reading "Dawn C. Russell".

Dawn C. Russell
Attorney for Applicant
Registration No. 44,751

Customer No. 004372

1050 Connecticut Avenue, NW, Suite 400
Washington, DC 20036-5339
Telephone: (202) 857-6000